

1
2 BILL NO. S-88-10-28

3 SPECIAL ORDINANCE NO. S-171-88

4 AN ORDINANCE approving Contract for
5 Res. 6109-88, North Anthony Blvd.,
6 curbs, walks, driveway approaches and
7 lighting between S. E. Johnson
8 Companies, Inc. and the City of Fort
9 Wayne, Indiana, in connection with the
10 Board of Public Works and Safety.

11 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
12 THE CITY OF FORT WAYNE, INDIANA:

13 SECTION 1. That the Contract for Res. 6109-88, North
14 Anthony Blvd., curbs, walks, driveway approaches by and
15 between S. E. Johnson Companies, Inc. and the City of Fort
16 Wayne, Indiana, in connection with the Board of Public Works
17 and Safety, is hereby ratified, and affirmed and approved in
18 all respects, respectfully for:

19 new curbs, sidewalks, driveway
20 approaches and street lighting on
21 North Anthony Blvd. from Lake to State
22 Blvd.;

23 involving a total cost of Two Hundred Fifty-One Thousand, One
24 Hundred Thirty-Seven and 40/100 Dollars (\$251,137.40).

25 SECTION 2. Prior Approval has been requested from
26 Common Council on October 18, 1988. Two copies of said
27 Contract are on file with the Office of the City Clerk and
28 made available for public inspection, according to law.

29 SECTION 3. That this Ordinance shall be in full force
30 and effect from and after its passage and any and all
31 necessary approval by the Mayor.

32 Samuel J. Talarico
Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

CONTRACT NO. 6109-88

NORTH ANTHONY BLVD. FROM LAKE AVE. TO STATE BLVD.

BOARD ORDER NO. 249-87

WORK ORDER NO. 10,726

THIS CONTRACT made and entered into in triplicate this 18th day of October, 1988, by and between S.E. JOHNSON CO., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

RES. NO. 6109-88 - NORTH ANTHONY BLVD. FROM LAKE TO STATE BLVD.

New Curb, Sidewalks, Driveway Approaches & Street Lighting

all according to RES. NO. 6109-88, Drawing No. _____, Sheets _____, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of \$ 251,137.40. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

tion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Contract No. 6109-88
- b. Instructions to Bidders for Contract No. 6109-88
- c. Contractor's Proposal Dated September 14, 1988
- d. Ft. Wayne Engr. Dept. Drawing # _____
- e. Supplemental Specifications for Contract No. 6109-88
- f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- h. Prevailing Wage Scale.
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond.
- k. Minority/Female Employment Hourly Utilization.
- l. Right-of-Way Cut Permit.
- m. Comprehensive Liability Insurance Coverage.
- n. MBE/WBE Committment Form.
- o. _____
- p. _____

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 6/30/89 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR) S.E. Johnson Companies, Inc.

BY: Thomas H. Lintz

Thomas H. Lintz, President
Assistant Secretary

BY: Robert W. Burnside

Robert W. Burnside, Secretary
Assistant Secretary

CITY OF FORT WAYNE, INDIANA

BY: PKLL

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

Angela S. Derheimer

Angela S. Derheimer

Director of Public Works

Daniel G. Heath

Director of Public Safety

C. David Silletto

C. David Silletto

Director of Administration & Finance

ATTEST:

Helen V. Gochenour

Helen V. Gochenour, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State,
this 5th day of October, 1988, personally appeared the
within named Thomas H. Lintz, Robt. W. Burnside, who being by me first duly
sworn upon their oaths say that they are the assistant secretary
and assistant secretary respectively, of
and as such duly authorized to execute the foregoing instrument and
acknowledged the same as the voluntary act and deed of
S.E. Johnson Companies, Inc. for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official
seal.

Julie A. Stackhouse
NOTARY PUBLIC

Julie A. Stackhouse
Type or Print Name of Notary

MY COMMISSION EXPIRES: January 21, 1991

ACKNOWLEDGMENT

STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 12th day of April, 1988, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Angela S. Derheimer, Daniel G. Heath and C. David Silletto, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Helen V. Gochenour, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Eschmann

NOTARY PUBLIC

Carolyn S. Eschman

Type or Print Name of Notary

My Commission Expires: 6-16-91

Approved by the Common Council of the City of Fort Wayne on
day of _____, 19__.

Special Ordinance No. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that

S. E. JOHNSON COMPANIES, INC.

(Name of Contractor)

201 S. Thomas Road, Fort Wayne, IN 46808

(Address of Contractor)

a Corporation hereinafter called
(Corporation, Partnership, or Individual)

Principal, and THE CINCINNATI INSURANCE COMPANY

(Name of Surety)

P. O. Box 145496, Cincinnati, OH 45214-5496

(Address of Surety)

and duly authorized to transact business in the State of Indiana,
hereinafter called Surety, are held firmly bound unto the City
of Fort Wayne, Indiana, an Indiana Municipal Corporation in the
penal sum of Two Hundred Fifty-One Thousand, One Hundred Thirty
Seven and 40/100- - - - - dollars
(\$ 251,137.40) for the payment whereof well and truly to
be made, the Principal and the Surety bind themselves, their
heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by those present.

The condition of the foregoing obligation is such that:

WHEREAS, the Principal entered into certain contract with the
City, dated the 30th day of September, 19 88,
for construction of:

New Curbs, Driveway, Approaching Walks for Drainage and Street Lighting on

North Anthony Blvd., from North Curbline of Lake Ave. to South Curbline of State
Blvd., Fort Wayne, IN - Resolution #6109-88

all according to the "General and Detailed Specifications" as
supplemented, and "Special Conditions" which together will be

PERFORMANCE BOND -- Page 2

referred to as the Standard Specifications; and according to Fort Wayne Street Engineering Department Drawing No. _____ Sheet No. _____. The Indiana State Highway Standard Specifications dated 1985 shall govern where the above specifications do not cover a specific term, and

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety and during the three years guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the

PERFORMANCE BOND -- Page 3

Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in _____

Three counterparts, each one of which shall be
(number)

deemed an original, this 30th day of September, 1988..

ATTEST:

S. E. JOHNSON COMPANIES, INC.

(Principal)

Marcella S. Overfield
(Principal) ~~Secretary~~

BY: Thomas H. Lintz (S)
Thomas H. Lintz, Asst. Secretary

(SEAL)

Julie A. Stackhouse
(Witness as to Principal)

201 S. Thomas Road
(Address)

Julie A. Stackhouse
4630 Kyle Rd., Fort Wayne, In. 46809
(Address)

Fort Wayne, IN 46808

THE CINCINNATI INSURANCE COMPANY
Surety

ATTEST:

Walter E. Manske
(Surety) ~~Secretary~~

(SEAL)

Bette McKinney
Witness as to Surety

BY: Donald R. Rush
Attorney-in-Fact, DONALD R. RUSH

Bette McKinney
3111 Devereux Drive
(Address)

1721 Magnavox Way, P. O. Box 885
(Address)

Fort Wayne, IN 46815

Fort Wayne, IN 46801

NOTE: Date of Bond must not be prior to date of Contract.
If Contract is Partnership, all partners should execute bond.

THE CINCINNATI INSURANCE COMPANY

Cincinnati, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Cincinnati, Ohio, does hereby constitute and appoint

Louis H. Andrews; Donald R. Rush; William G. Niezer; Gerald C. Kramer, Jr.;
Fred L. Tagtmeyer and/or Donald E. Douglass

of Fort Wayne, Indiana

and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Any such obligations in the United States, in any amount.

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

"RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973:

"RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary and Treasurer and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company."

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Senior Vice President this 14th day of June, 1984.



STATE OF OHIO) ss:
COUNTY OF HAMILTON)

THE CINCINNATI INSURANCE COMPANY

Donald E. Douglass
Senior Vice President

On this 14th day of June, 1984, before me came the above-named Senior Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.

Henry G. Berlon

HENRY G. BERLON, Attorney At Law
Notary Public State of Ohio
My commission has no expiration date.
Section 147.03 R. C.

I, the undersigned Secretary and Treasurer of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Cincinnati, Ohio.
this 30th day of September 1988.



Robert L. Dushens
Secretary and Treasurer

Read the first time in full and on motion by Talarico, seconded by Stew, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19_____, at _____ o'clock _____ M., E.S.T.

DATED: 10-25-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Talarico, seconded by Stew, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>9</u>			
<u>BRADBURY</u>	<u>✓</u>			
<u>BURNS</u>	<u>✓</u>			
<u>GIAQUINTA</u>	<u>✓</u>			
<u>HENRY</u>	<u>✓</u>			
<u>LONG</u>	<u>✓</u>			
<u>REDD</u>	<u>✓</u>			
<u>SCHMIDT</u>	<u>✓</u>			
<u>STIER</u>	<u>✓</u>			
<u>TALARICO</u>				

DATED: 11-22-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. S-171-88

on the 22nd day of November, 1988,

Sandra E. Kennedy ATTEST
SANDRA E. KENNEDY, CITY CLERK

SEAL
Thomas C. Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of November, 1988, at the hour of 10:00 o'clock A.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 29th day of November, 1988, at the hour of 9:30 o'clock A.M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

TITLE OF ORDINANCE Contract for Res. 6109-88, North Anthony Blvd., curbs,
driveway approaches & lighting

DEPARTMENT REQUESTING ORDINANCE Board of Public Works & Safety

SYNOPSIS OF ORDINANCE The contract for Res. 6109-88, is for new curbs,
sidewalks, driveway approaches and street lighting on North
Anthony Blvd. from Lake to State Blvd. S. E. Johnson Co. is the
contractor. PRIOR APPROVAL RECEIVED ON 10/18/88

J-PP-10-28

EFFECT OF PASSAGE Improvement of above location.

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$251,137.40 (LR&S & Barrett
Law)

ASSIGNED TO COMMITTEE _____

BILL NO. S-88-10-28

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract
for Res. 6109-88, North Anthony Blvd., curbs, walks,
driveways approaches and lighting between S.E. Johnson
Companies, Inc. and the City of Fort Wayne, Indiana, in
connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

YES

NO

Samuel J. Talarico
SAMUEL J. TALARICO
CHAIRMAN

Mark E. GiaQuinta
MARK E. GIAQUINTA
VICE CHAIRMAN

David C. Long
DAVID C. LONG

James S. Stier
JAMES S. STIER

Janet G. Bradbury
JANET G. BRADBURY

CONCURRED IN 11-22-88

Sandra E. Kennedy
Sandra E. Kennedy
City Clerk